

REMARKS

Claims 38-42, 45, 46, 49-52, 65, 66, 69, 71, 72, 75, 76, 78-81 and 83-85 are pending in the instant application. Claims 38-42, 45, 46, 49-51, 72, 75, 76, 78-81, 83 and 84 previously withdrawn from consideration are now canceled. Claims 52, 65 – 66, 69, 71, and 85 are presently under consideration. Claim 52 is amended herein to incorporate the limitations of claim 71 which is canceled within. No new matter is added by the within amendment.

The response to the Office Action after Final is properly entered at this time as the amendments are made to rewrite the claims in a form indicated to be allowable by the Examiner and to cancel claims to non-elected inventions. The cancellation of previously withdrawn claims is done without prejudice and Applicant reserves the right to file one or more divisional or continuation applications to pursue the matter in the cancelled claims.

Allowable matter

The Office Action has indicated that claim 71 would be allowable if rewritten in independent form. Applicant thanks the Examiner for the indication of allowable matter and has amended claim 52 to include all of the limitations of claim 71. As the remaining claims are dependent on claim 52, they are also allowable.

Rejection of claim under 35 U.S.C. §112, first paragraph

The Office Action has rejected claims 52, 65-66, 69, and 85 for allegedly failing to comply with the requirement for written description. Applicant respectfully disagrees. The Office Action alleges that Applicant is not in possession of the generically recited “substance that binds to IL-13.” However, the Office Action states that applicant is in possession of the genus of a substance that binds to IL-13 wherein the substance is an antibody.

Without agreeing with the rejection and to progress the prosecution of the application, Applicant has amended claim 52 to recite that the substance that binds IL-13 is an antibody as previously recited in claim 71. The rejection is overcome.

Applicant respectfully requests entry of the amendment after final and the issuance of a notice of allowance.

Fees and request for extension of time for reply

It is believed that there is no fee due with this response. However, if a fee is due, the Commissioner for Patents is hereby authorized to charge Deposit Account 04-1105 referencing Docket No. 84807(47992) any fee required with this or any other paper filed by this firm in relation to this application. Credit of any overpayments is respectfully requested.

Dated: September 29, 2009

Respectfully submitted,

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